

PATENT

Application No.:09/049,297
Attorney Docket No.:98-007REMARKS

- Claims 98-108 were pending in the present application
- Claims 98-108 stand rejected

Upon entry of this amendment, which is respectfully requested for the reasons set forth below:

- Claims 98-108 will be pending
- Claims 98-99 and 108 will be the only independent claims

Telephone Interview

Applicants would like to thank the Examiner for the helpful telephone conversations held on November 28, 2001 and December 7, 2001 with Applicants' representatives. The Examiner and Applicants' representatives discussed the present application in light of the cited references and in light of a prior telephone conversation held June 19, 2001.

During the conversation held June 19, 2001, the conversation held November 28, 2001, and the conversation held December 7, 2001, the Examiner and Applicants' representatives agreed that neither the Valencia reference nor any other prior art of record, teaches or suggests a feature generally directed to *determining a second discount based on whether the first difference is less than a predetermined minimum transaction period and whether the second difference is greater than a predetermined discount adjustment period*, as recited in each of independent Claims 98-99 and 108. The Examiner's Interview Summaries mailed December 3, 2001 (Paper No. 21) and June 25, 2001 (Paper No. 18) each reflect this agreement.

Applicants are grateful for the opportunity to discuss the present application with the Examiner.

Section 103(a) Rejection

Claims 98-105 and 107-108 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,687,322 issued to Deaton et al. ("Deaton"), and further in view of U.S. Patent No. 5,380,991 issued to Valencia et al. ("Valencia"). Applicants respectfully traverse the Examiner's Section 103(a) rejection.

- a) The cited references do not teach all of the features of any of independent Claims 98-99 and 108

As discussed with the Examiner during the above-described telephone conversations, Deaton and Valencia, either alone or in combination, are devoid of a suggestion of a feature generally directed to *determining a second discount based on whether the first difference is less than a predetermined minimum transaction period and whether the second difference is greater than a predetermined discount adjustment period*, as recited in each of independent Claims 98-99 and 108. The Examiner has agreed during the above-described telephone conversations that the prior art of record does not suggest the above feature.

PATENT

Application No.:09/049,297
Attorney Docket No.:98-007

b) The proposed modification of Deaton in light of Valencia would change the principle of operation of the Deaton system

There is no suggestion or motivation, in either the cited references, in the knowledge generally available to one of ordinary skill in the art, or in the problem to be solved, to modify or to combine the cited references to provide the claimed features.

The Examiner asserts that it would have been obvious to "combine the teachings of Deaton et al wherein rewards of increasing or decreasing value are provided to high volume customers with the teachings of Valencia et al wherein customers who make repeated purchases within a certain timeframe are rewarded with increasing discounts and result in the invention as claimed." Applicants respectfully traverse this assertion.

Deaton teaches away from providing discounts of increasing value to customers making repurchases within a predetermined time period. The principle of operation of the Deaton system with respect to infrequent and frequent customers is to award greater incentives to those customers that act undesirably (e.g., are infrequent shoppers within a certain timeframe) than to those customers that act desirably. See, e.g., column 102, lines 53-65; column 109, lines 53-67. Accordingly, the Examiner's proposed modification of Deaton would change the principle of operation of the Deaton system with respect to the Deaton system's approach to providing incentives to frequent and infrequent customers.

Accordingly, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness for any of independent Claims 98-99 and 108 or claims depending therefrom. For at least the reasons set forth herein, Applicants respectfully request allowance of the pending Claims 98-108.

PATENT

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It is submitted that all of the claims are now in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

Please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

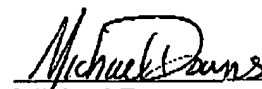
Petition for Extension of Time to Respond

Applicants hereby petition for a one-month extension of time with which to respond to the Office Action. Please charge \$110.00 for this petition to our Deposit Account No. 50-0271. Please charge any additional fees that may be required for this Response, or credit any overpayment to Deposit Account No. 50-0271.

If an additional extension of time is required, please grant a petition for that extension of time which is required to make this Response timely, and please charge any fee for such extension to Deposit Account No. 50-0271.

Respectfully submitted,

January 7, 2002
Date



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